makes of cigars than union-made ones, in that the organization which makes the cigars upon which the labels are placed is described as "opposed to inferior, rat-shop, coolie, prison, or filthy tenement house workmanship." The decisions on the question of the validity of such labels are not uniform. Opposed to enjoining the infringement are *Werner* v. *Brayton* (Mass. 1890) 25 N. E. 46; *Union* v. *Conhaim*, 40 Minn. 243, 41 N. W. 943; *McVey* v. *Bundel*, 144 Pa. St. 235, 22 Atl. 912; *Schneider* v. *Williams*, 44 N. J. Eq. 391, 14 Atl. 812. Sustaining the validity of the labels as "trade-marks," see *Strasser* v. *Moonelis*, 55 N. Y. Super. Ct. (affirmed, 15 N. E. 730); *Cohn* v. *People*, 149 Ill. 486, 37 N. E. 60. See also *State* v. *Hagen*, 6 Ind. App. 169, 33 N. E. 223; *Carson* v. *Ury*, 39 Fed. 777. In a number of States—and in Kentucky since this case arose—statutes have recently been passed recognizing the right of of wage earners to organize and select appropriate symbols to designate the results of their handiwork.

MISCELLANEOUS.

Bank—Acting as Agent—Liability.—Pefforday v. *Citizens' National Bank of Latrobe*, 38 Atl. Rep. (Pa.) 1030. Plaintiff entrusted defendant national bank with several shares of railroad stock, to be forwarded by them and sold according to his direction by the bank's brokers. The stock was sold and the broker's check forwarded to the bank which instantly placed the amount to the credit of the plaintiff. Meanwhile the brokers had failed, and the bank having forwarded the check it was returned protested. Defendant thereupon charged back to the plaintiff the amount of the check, and the plaintiff, having overdrawn his account according to the latter accounting, sues the bank for the balance due him according to the first accounting, *Held*, that plaintiff could recover. A national bank in buying or selling stock exercises no function pertaining to it as a bank. In this case it was a voluntary action on the part of the bank and having assumed the liability of an agent it was subject to the rules governing that relation. In applying the amount of the check to the plaintiff's credit they acted voluntarily and were liable for any loss arising therefrom. *Paul* v. *Ginn*, 165 Pa. St. 139, 30 Atl. Rep. 721. Judge Mitchell, dissenting, based his opinion on the ground that the relation existing between the defendant and plaintiff was that of bank and depositor rather than that of principal and agent.

Divorce—Adultery—Condonation.—Gorser v. *Gorser*, 38 Atl. Rep. (Pa.) 1015. In an action for divorce by a husband it was shown that the wife had committed various improprieties which she had admitted to him, but denied actual guilt. Thereupon he had accepted her explanation but had never cohabited with her afterwards. Proof of her guilt after that time having been established, it was *held* by the court that such previous condonation would not prevent the decree from being granted.

Appeal—New Trial—Surprise.—Allen v. *Chambers et al.*, 51 Pac. Rep. (Wash.) 478. The surprise contemplated by the statute as a ground for a new trial must relate to a matter of fact, and not of law; but where it is shown that appellants neglected to introduce material evidence shown by their affidavits to be in their possession, relying on a ruling of the supreme court declaring such testimony not necessary for their view of the case, which ruling was apparently directly overthrown by a subsequent decision of the court, rendered after appellants' case had been submitted to the trial judge, a new trial will be granted. See *Starkweather* v. *Loomis*, 2 Vt. 573.